

Application No.: 10/652,744
Decl. Of John M. Lown
Reply to Office Action dated December 15, 2004

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/652,744

Confirmation No.: 1764

Applicant: Lown et al

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Examiner: Smalley, James N.

Docket No.: FLO2-N54

Title: CONTAINER CAP ASSEMBLY

DECLARATION OF JOHN M. LOWN

I, John M. Lown, hereby declare as follows:

1. I am the co-inventor of the invention described and claimed in the subject application and the CEO of Snapware Corporation ("Snapware"), the assignee of the application.

2. Our counsel, Mr. Harold L. Jackson, requested that I review the references relied upon in the Office Action dated December 15, 2004 to reject the original claims in this application and point out what I consider to be relevant differences between the containers disclosed in such references and our invention.

3. By way of my background, I attended the University of Phoenix during 1976-1977, majoring in accounting. In 1984 I founded Auto Aid, a chain of retail auto supply stores, and sold the company in 1988. In 1989 I started FloTool Corporation, now Snapware by change of name, on the basis of a patented invention, i.e., an injection molded plastic on/off spout for dispensing oil and

antifreeze and other fluids. Following the development of the spout I added other automotive tools and accessories which were marketed through national retail chains. Around 1995 I directed my attention to food storage products and in particular to developing a snap closure for both small mouth and large mouth containers. The closures for large mouth containers (other than screw-on lids) then on the market frequently did not provide a reliable seal for storing food stuffs over a lengthy period and in many cases were not easy to open, especially for those suffering from arthritis or tendinitis. To solve this problem the company, through an industrial design team, created a large mouth dry food storage container with an effective seal that was easy to open. This product was awarded U.S. Patent No. 5,582,314 ("314 patent") and further awarded a silver medal by the Industrial Designer's Society of America for excellence in design and function. This popular product is not only sold through nationwide chains in this country, but in many foreign countries as well. A list of utility patents of which I am the sole or co-inventor is attached as Exhibit A.

4. The '314 patent utilizes a separate gasket member carried by the cap body to provide a reliable liquid tight seal between the lid and cap body. In addition, a latching device, separate from the sealing surfaces, is utilized to lock the lid in the closed and sealed position. Unfortunately, these features add to the cost of the '314 closure cap assembly.

5. Many food products, such as pretzels, popcorn, peanuts, peanut butter, and mayonnaise, are frequently sold in large mouth plastic containers with screw-on lids. To reach the container's contents the lids must be unscrewed. While such screw on lids are relatively inexpensive, unscrewing the lid is not always easy for many people, especially so for those suffering from arthritis or tendinitis. In addition, after some of the contents have been removed it is necessary to screw the

lid back on the container, assuming that the lid has not been misplaced in the interim. It seemed to me that a screw on cap body with a hinged lid arrangement for large mouth containers would largely solve the above problems provided that it was cost competitive. To this end, my co-inventor and I directed our efforts. The result is the closure cap assembly of the subject invention.

6. To reduce the cost we eliminated the separate sealing gasket as well as the separate latching arrangement. We designed the cap body with female threads to accommodate the threads of large mouth containers, i.e., having a diameter of 53 mm or greater. Such wide mouth containers permit a user to reach inside of the container (e.g., 110 mm) or insert a utensil such as a knife through the container opening (e.g., 57 mm) to access the contents. To provide a reliable liquid tight seal for such a large mouth container with a hinged lid while remaining cost competitive with screw-on lids proved to be a significant challenge. The invention of the subject application is the result of our efforts. Not only does the container closure cap provide a reliable seal and locking arrangement which is user friendly, but it is cost competitive. We believe that food stuff suppliers, i.e., OEM's, will find our hinged closure cap a welcome substitute to conventional screw-on lids.

7. Wide mouth container cap assemblies, molded as two separate pieces with each piece including one-half of the hinge, as described specifically in the subject application and cap assemblies molded as one unit with a living hinge, as described in PCT Application No. PCT/US04/28086, were placed on the market by Snapware in the fourth quarter of 2004. I have requested counsel to send the Examiner one of each type along with a container so that the Examiner can see the end result of our efforts. During the past several months, we have sold about \$150,000.00 of wide mouth containers with the container cap assemblies in accordance with the invention. Our

limited tooling has been in part responsible for our limited sales to do. We are in the process of acquiring more tooling. The sales have been made to national chains, such as Wal Mart, Target, etc. Snapware has projected that the sales of such containers and closures will range between \$500,000.00 to \$1,500,000.00 through the end of 2005 to Snapware's national retail chain customers. Such sales and anticipated sales have resulted from the superior performance of the closures and their cost.

8. Snapware is presently in discussions with several international food stuff suppliers for the replacement of conventional screw-on lids with our new innovative closure cap assemblies. If the discussions bear fruit, which we believe they will, the above sales forecast will be conservative on an annual basis.

9. With respect to the Office Action, I note that U.S. Patent No. 6,050,434 to McNab, which was cited as anticipating our invention, relates to a pharmaceutical fluid dispensing cap. The McNab cap skirt (11) is formed with a upwardly extending pouring spout terminating in a small discharge opening through which a liquid (or powder) is to be discharged with a cover arranged to snap over the spout. The McNab cap is clearly neither designed for nor would it be useful as a closure for wide mouth containers. The patent is primarily directed to the design of a living web hinge which allows the cup-shaped cover to be snapped over the dispensing spout to close the discharge opening. While I agree that the drawings illustrate what appears to be interlocking flanges on the cap skirt and cover (in the closed position), the cap skirt flange (not identified in the description) does not terminate in a rim with an inner surface extending downwardly from the rim to provide unobstructed access to the container interior. In addition, in our invention, the interlocking flanges provide the only sealing

surfaces to prevent the contents in the container from spilling out in contrast to McNab's cover skirt which closes the discharge opening.

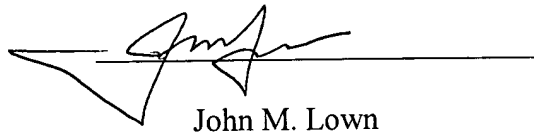
10. The Office Action also rejected original claims 1-10 as being obvious over Snapware's earlier '314 patent in view of U.S. Patent No. 4,380,304 to Anderson. As pointed out above, the '314 closure cap, while designed for large mouth containers and employing a hinged lid, requires a gasket member and a latching device, separate from the sealing surfaces to provide a seal and lock the lid in a closed position. The '314 closure cap, while quite successful, cannot compete in price with conventional screw on lids. The Anderson patent relates to a plastic container with a push on lid. The lid has a downwardly extending inner stub wall (90) with sealing ribs (92) which seal against the inner wall of the container. There is no flange in either the Anderson patent nor my '314 patent which is spaced inwardly from the lid rim to interlock and provide a seal with a cap body flange. In my opinion, the flanges 24 and 88 of the Anderson container/lid are not designed to provide a liquid tight seal, if they were, there would be no need for the stub wall. I disagree with the Office Action's statement that it would be obvious to configure the angles of the interlocking flanges (referred to as beads) to accomplish the required sealing and locking function while allowing a hinged lid for a wide mouth container cap to be easily opened. I also fail to see how one skilled in the art would find the present invention obvious over the '314 and Anderson patents.

11. U.S. Patent No. 2,690,861 to Tupper, relates to a dispensing closure for a small container having a small diameter tubular neck without threads. The Tupper closure does not have an inner sealing flange on the lid, as is the case in our invention, but instead relies on the peripheral wall of the cap, the rib on the insert collar and a plug on the cap to provide the seals. The lid flange which

is spaced inwardly of the lid rim is an important feature of our invention. I fail to see how the Tupper patent with or without my '314 patent would have been of any help to my co-inventor and I in arriving at our invention.

12. All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true, and further, that these statements made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

Signed this 4th day of March, 2005 at Fullerton, California.



John M. Lown



Exhibit A

5,775,483
5,419,467
5,320,232
5,305,900
5,135,140
5,111,977
5,067,639
5,000,360